



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/114,697    01/13/98    POWERS    M    1562-PAT

FRANK D GILLIAM  
SUITE 200  
4565 RUFFNER STREET  
SAN DIEGO CA 92111

QM31/0607

EXAMINER

LEWIS, R

ART UNIT

PAPER NUMBER

3732

DATE MAILED:

06/07/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/114,697

Applicant(s)

POWERS

Examiner

R. LEWIS

Group Art Unit

3732

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/25/99 (Amendment)
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-9 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 2, 4, 6, 8 AND 9 is/are rejected.
- ☒ Claim(s) 3, 5 AND 7 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 3732

### **Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branford (5,030,098) in view of McCarty, Jr. (5,374,237).

Branford discloses a vibrator mouthpiece having a housing 1, on/off switch ("activating means") and a flat solid arch shaped mouthpiece 2.

In regard to claim 1, Branford discloses little regarding the vibrating mechanism, but does illustrate a unit 1 having a power cord. McCarthy teaches the use of batteries for a similar vibrator mouthpiece. To have used batteries to power the vibrator in view of McCarty, Jr. would have been obvious to one of ordinary skill in the art. Additionally, it is unclear if the Branford mouthpiece 2 meets the two to five millimeters thickness limitation of claim 1. One of ordinary skill in the art would have found the selection of a thickness within the claimed range for the manufacture of the Branford device obvious.

In regard to claim 4, note element 4 which could be interpreted to be part of the broadly defined housing structure.

Art Unit: 3732

In regard to claim 6, the opening in housing 1 through which element 4 (here considered to be part of the mouthpiece) extends is considered to be the broadly claimed "slot."

**Prior Art**


Reiss (1,826,434) is made of record.

**Allowable Subject Matter**

Claims 3, 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 305-3590.

R.Lewis  
June 2, 1999

  
Ralph A. Lewis  
Primary Examiner  
AU3732